

IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE MIDDLE DISTRICT OF ALABAMA
 EASTERN DIVISION

TOMMY LEE WILSON, #225500,)
)
Petitioner,)
)
v.) CIVIL ACTION NO. 3:06-CV-751-WKW
)
RALPH HOOKS, et al.,)
)
Respondents.)

O R D E R

Respondents contend in their Answer and supplement that the claims raised in this habeas corpus petition by Tommy Lee Wilson [“Wilson”] lack merit. They show that Wilson’s challenge to the sufficiency of the evidence provides no basis for relief because the Alabama Court of Criminal Appeals adjudicated this claim on direct appeal properly on the merits and adversely to Wilson. *Williams v. Taylor*, 529 U.S. 362, 404-405, 120 S.Ct. 1495, 1518- 1523 (2000). Moreover, on appeal from the denial of the Rule 32 petition, the appellate court likewise determined that Wilson failed to “sufficiently plead[] facts necessary to establish . . . his claims” challenging the sufficiency of the evidence, the assistance provided by trial counsel, and the testimony of Darcell Brown. *Respondents’ Exhibit B-1* at 3.

Title 28 U.S.C. § 2254(d)(1) places new constraints on the power of a federal district court to grant a state prisoner’s application for habeas corpus relief. In sum, the statute directs that this court may grant a writ of habeas corpus only “if the relevant state-court

decision was either (1) ‘*contrary to ...* clearly established Federal law, as determined by the Supreme Court of the United States,’ or (2) ‘*involved an unreasonable application of ...* clearly established Federal law, as determined by the Supreme Court of the United States.’ (Emphases added.)” *Williams v. Taylor*, 529 U.S. at 404-405, 120 S.Ct. at 1519. “Under § 2254(d)(1) and the *Williams* decision, [a federal court] can grant relief only if the state court decision denying relief is ‘contrary to’ clearly established federal law or is an ‘unreasonable application’ of federal law.” *Brown v. Head*, 272 F.3d 1308, 1313 (11th Cir. 2001). In the vast majority of cases, a federal district court will be faced with the contention that the state court unreasonably applied federal law.

In determining whether the state court’s decision is an unreasonable application of the law set out in [applicable] Supreme Court decisions, we need not decide whether we would have reached the same result as the state court if we had been deciding the issue in the first instance. Instead, we decide only whether the state court’s decision of the issue is objectively unreasonably. *See Williams v. Taylor*, 529 U.S. 362, 411, 120 S.Ct. 1495, 1522, 146 L.Ed.2d 389 (2000) (“Under §2254(d)(1)’s ‘unreasonable application’ clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.”); *Brown v. Head*, 272 F.3d 1308, [1313] (11th Cir. 2001)(“It is the objective reasonableness, not the correctness *per se*, of the state court decision that we are to decide.”).

Wright v. Secretary for the Dept. of Corrections, 278 F.3d 1245, 1256 (11th Cir. 2002). Additionally, the statute makes it clear that a federal court cannot grant relief with respect to claims adjudicated on the merits by the state courts “unless the adjudication of the claim

. . . resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2).

With respect to the newly discovered evidence claim related to the veracity of Darcell Brown’s testimony, the respondents further argue “procedural default” as the last state court to address the issue deemed it defaulted due to Wilson’s failure to plead this claim in accordance with the requirement in Rule 28(a)(10), *Alabama Rules of Appellate Procedure* “that an argument contain ‘the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.’” *Respondents’ Exhibit B-1* at 4. Based on this rule of state appellate procedure, the Alabama Court of Criminal Appeals held that Wilson waived this claim because he “presented no argument on appeal supporting this allegation.” *Id.* The respondents also maintain that the claims of ineffective assistance of counsel are without merit.

A procedural default bars consideration of the merits of a claim unless the petitioner can establish “cause” for the failure to follow the state’s procedural rules and show “prejudice” resulting from this failure. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 844-845 (1999); *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wainwright v. Sykes*, 433 U.S. 72 (1977); *Brownlee v. Haley*, 306 F.3d 1043, 1065 (11th Cir. 2002); *Holladay v. Haley*, 209 F.3d 1243, 1254 n. 9 (11th Cir.), *cert denied*, 531 U.S. 1017 (2000); *Collier v. Jones*, 901 F.2d 770, 773 (11th Cir. 1990). However, even if the petitioner fails to show cause and prejudice, a procedural default will not preclude a federal court from considering a habeas

petitioner's federal constitutional claim where the petitioner is able to show that the court's failure to address his claim would result in a "fundamental miscarriage of justice." *Schlup v. Delo*, 513 U.S. 298, 320 (1995); *Murray v. Carrier*, 477 U.S. 478 (1986). The miscarriage of justice exception allows federal courts to address procedurally defaulted claims if the petitioner shows that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Carrier*, 477 U.S. at 496.

Accordingly, it is

ORDERED that on or before November 14, 2006, the petitioner may file a response to the answers filed by the respondents. Any pleadings, documents or evidence filed after this date will not be considered by the court except in exceptional circumstances. The petitioner is advised that at any time after November 14, 2006, the court shall "determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the [court] shall make such disposition of the petition as justice shall require." Rule 8(a), *Rules Governing Section 2254 Cases in the United States District Courts*.

The petitioner is instructed that when responding to the respondents' answers he may file sworn affidavits or other documents in support of his claims. Affidavits should set forth specific facts which demonstrate that the petitioner is entitled to relief on those grounds presented in the habeas corpus petition. If documents which have not previously been filed with the court are referred to in the affidavits, sworn or certified copies of those papers must be attached to the affidavits or served with them. When the petitioner attacks the respondents' answers by use of affidavits or other documents, the court will, at the proper

time, consider whether to expand the record to include such materials. *See Rule 7, Rules Governing Section 2254 Cases in the United States District Courts.*

The petitioner is cautioned that in responding to the respondents' assertion that he has procedurally defaulted on a claim he must state specific reasons why he failed to comply with the state's procedural rules or otherwise did not present or pursue these claims in state court either at the trial court level, on appeal or in available post-conviction proceedings. The petitioner is advised that the reasons presented must be legally sufficient and that the facts surrounding or relating to the reasons for the failure must be stated with specificity. If the petitioner asserts that this court should address the procedurally defaulted claim under the fundamental miscarriage of justice exception, the petitioner must show specific reasons for the application of this exception.

Done this 25th day of October, 2006.

/s/ Delores R. Boyd
DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE